

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1091 of 1998

to

FIRST APPEAL No 1096 of 1998

Date of decision: 25-6-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ABRAHAMBHAI BHUVABHAI MALEK

Appearance:

Mr. Mukesh Patel, AGP for Appellants

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/06/98

ORAL JUDGEMENT

This group of six appeals arise from common judgment and award of the learned 2nd Extra Assistant Judge, Kheda at Nadiad, passed in Land Acquisition Reference Cases No.56/90 and other consolidated cases. Learned counsel for the appellants submitted a statement showing the amount of additional compensation awarded by the civil court in these appeals. Out of the six appeals, in three appeals the amount of additional compensation awarded by the civil court is less than Rs.15,000/-, and as such these three appeals deserve to be dismissed in view of the decision of this court in Civil Application No.7867/97 and cognate matters decided on 10th September, 1997. In the other three appeals, the amount of compensation awarded is more than Rs.15,000/- and as such they are to be considered on merits.

2. The date of notification under section 4 is 12th February, 1987 and that of section 6 notification is 14th July, 1987. The land in dispute was acquired for Mahi canal project. These lands are situated in village Khuntaj of Nadiad Taluka, District Kheda. The Special Land Acquisition Officer has awarded compensation to the claimants at the rate of Rs.1.50 ps. per sq.mt. Feeling aggrieved by that award the claimants prayed for making reference of the matter to the Civil Court under section 18 of the Land Acquisition Act, 1894. Accordingly reference was made. The claimants have prayed for awarding compensation to them, for the land acquired, at the rate of Rs.10 per sq.mt. Under the impugned award the learned reference court awarded compensation to the claimants at the rate of Rs.8.81 per sq.mt. which resulted in additional compensation to the claimants at the rate of Rs.7.31 ps. per sq.mt. Hence these appeals.

3. The claimants were also ordered to be given severance charges at 12% on the market value. The learned reference court has determined the compensation to be paid to the claimants on crop basis. The income has been taken to Rs.4233/- per biga, and multiplier of 5 has been taken. To arrive at that conclusion the learned reference court has considered the evidence produced by the claimants.

4. In this case, from the side of the appellant no evidence has been produced. Learned counsel for the

appellant has contended that the claimants have not produced any evidence for establishing that they were earning about Rs.4233/- per year. Next submission has been made that in all eventualities the learned reference court has committed serious error in awarding severance charge at the rate of 12% on the market rate.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the appellants. It is not correct to say on the part of the learned counsel for the appellant that from the said of the claimants no evidence has been produced. From their side one Mohmedbhai Hasanbhai was examined and he has given out the details of the crops which were being taken by the claimants from the land. Even on cross examination of the witness at length, the appellants were unable to get anything out of the same. After going through the judgment of the reference court I am satisfied that the court has not committed any error in reaching to the conclusion that the income from the land has to be taken at Rs.4233/- per biga. The reference court has taken assessment of the income towards the lower side. Apart from this multiplier of five was applied and on the basis of the same the amount of compensation payable to the claimants has been determined, to which no exception can be taken. It is a case where the reference court has considered all the aspects of the matter and, in the presence of uncontroverted evidence produced by the claimants, determined the compensation to be paid to the claimants.

6. It is really shocking that the appellant, instead of contesting the claim before the reference court by producing cogent and material evidence, it has raised the grounds in the appeal. It is not expected of the appellant -State not to contest the claim of the claimants before the reference court, and when the award is made by the reference court to make hue and cry in appeal in the High Court. It is their duty, if they really considered that compensation as claimed by the appellants is not justified, to oppose the same by producing evidence. That duty has not been discharged, but when evidence produced by the claimants is relied upon, the appellant has come up with the case that it should not have been relied upon. In the matter of determination of compensation to be awarded to the claimants for acquisition of their land some times some guess work has to be made by the reference court also. This court cannot be oblivious of the fact that the land was acquired in the year 1987 and the compensation awarded is Rs.8.81 ps per sq.mt. In the year 1987 this

amount was not worth more than the value of 3 kg. of wheat flour. Taking into consideration all other aspects as well as the rising price of land as well as the cost of essential commodities which are necessary for living, this amount of compensation awarded by the reference court cannot be said to towards the higher side. It is just and reasonable amount which has been awarded. Much emphasis has been laid on the ground that severance charge at the rate of 12% of the market rate should not have been awarded. But, looking to the fact that the award made by the reference court prima facie appears to be not on the higher side. Therefore no interference is called for in these appeals. However, it is made clear that these appeals have been decided on its facts and it may not be taken to be a judgment as if this court has found that the judgment of the reference court to the extent it awarded severance charge at the rate of 12% of the market value has universal application.

7. In the result all these appeals fail and the same are dismissed.

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